

COVINGTON & BURLING

EX-1017-03 LATE FILED
ORIGINAL

1201 PENNSYLVANIA AVENUE NW WASHINGTON, DC
WASHINGTON, DC 20004-2401 NEW YORK
TEL 202 662 6000 LONDON
FAX 202 662 6291 BRUSSELS
WWW.COV.COM SAN FRANCISCO

JENNIFER A. JOHNSON
TEL 202 662 5552
FAX 202 778 5552
JJJOHNSON@COV.COM

March 25, 2003

RECEIVED

Bv Hand Delivery

MAR 25 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

**Re: En Parte – MB Docket No. 02-277 and
MM Docket Nos. 01-235, 01-317 and 00-244**

Dear Ms. Dortch:

The National Association of Broadcasters (“NAB”) and the Network Affiliated Stations Alliance (“NASA”) submit this letter to provide further information in response to an inquiry from the FCC staff with respect to certain data submitted as a part of NAB’s and NASA’s comments filed on January 2, 2003, in the above-captioned proceeding.¹ Specifically, NAB/NASA provide additional information with respect to Table 3 of their comments (at page 28), which reports the frequency with which network programming has been discussed during ABC, CBS and NBC affiliates association board meetings over the past three to four years, the frequency with which network representatives participated in these meetings, and the extent to which network actions or decisions pertaining to network programming have been reported to the association boards during these meetings, either directly by network executives participating in the meetings or through board representatives who have met or spoken with network executives prior to these meetings.

The NAB/NASA comments (at pages 24-27, 29-31) and reply comments² (at pages 18-21) provide numerous examples of affiliate input and influence with respect to particular network programming decisions. These examples demonstrate the important and unique influence that affiliates have on the programming decisions of the national networks – an influence that stems from the right of affiliates to reject network programming to serve the

¹ Comments of the National Association of Broadcasters and the Network Affiliated Stations Alliance, MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244 (filed January 2, 2003).

² Reply Comments of the National Association of Broadcasters and the Network Affiliated Stations Alliance, MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244 (filed February 3, 2003).

Ms. Marlene H. Dortch
March 25, 2003
Page 2

particular tastes and needs of their local communities. that is not exercised by stations that are owned by the national networks and that would be seriously jeopardized by relaxation of the 35% cap.

This important influence also is demonstrated by the data submitted by NAB/NASA in Table 3 of their comments regarding the frequency with which network content is addressed during affiliates association board meetings. The FCC staff has sought additional information with respect to the distinction between meetings where network programming was discussed and those where network actions or decisions with respect to programming issues also were reported.

Discussions About Network Programming Decisions. As Table 3 indicates, network programming issues were discussed during approximately 77% of ABC affiliates association board meetings, 78% of CBS affiliates association board meetings, and 73% of NBC affiliates association board meetings during the time periods reviewed. During these meetings, board members raised and discussed issues of concern with respect to network content and programming decisions, based on their own views with respect to their network affiliated stations or on the views expressed to them by other affiliates in the regions for which they are responsible.

- For NBC affiliates, such discussions covered topics such as affiliate concerns that nudity in *Dog Eat Dog* and the corresponding promos for the program crossed the line and raised strong objections in local communities; concerns about the impact live clearance of XFL games would have on West Coast affiliates' ability to provide local news to their viewers; questions regarding what steps the network would take to increase racial and ethnic diversity on its programs; concerns about network preemptions of core children's programming; concerns about violent and sexual content in NBC's then-future program *Kingpin* and in promos for that program, the need to speak with network programming executives to discuss these concerns and the need to preview episodes to ensure the content was suitable to air in local communities; and discussions about partnering with NBC to develop special programming for the anniversary of September 11.
- For CBS affiliates, such discussions covered topics such as concerns about CBS's efforts to phase out the "blended" or "co-op" format of CBS's early news program, which permitted substantial local content in the first hour, and to replace it with the "full network" (all national content) format of the low rated two hour morning program; concerns about CBS's coverage of breaking news events (as well as the lack of assertiveness by CBS owned and operated stations on these issues); concerns about preemptions of local news by the network's **NCAA** football programming; concerns about network preemptions of core children's programming; and the desire for prior notice of network programming decisions.

Ms. Marlene H. Donch
March 25, 2003
Page 3

- For ABC affiliates, such discussions covered topics such as concerns regarding the suitability of a *Victoria's Secret Special* for local communities and the "cheapening" of the ABC brand; the need for ABC to increase the amount of news programming it provides; concerns regarding the quality of ABC news programs such as *Good Morning America* and *World News Tonight*; concerns regarding advertising and promotional "clutter" at the end of network programming; concerns regarding a paucity of HDTV programming on the network; concerns regarding the quality of ABC programming during prime time, such as an over reliance upon *Who Wants To Be A Millionaire*; concerns regarding the network's increasing use of its in-house programming production studio versus independent production studios; concerns that the network's programming decisions for broadcast and the quality and uniqueness of its programming product were being diminished by increased "repurposing" of network news, entertainment, daytime and sports programming on cable; concerns regarding ABC's practice of attempting to induce viewers to switch to its cable channel ESPN at the end of *Monday Night Football*; and concerns that the network's decision to continue airing *Once and Again*, despite its lack of popularity, was driven by the network's ownership of the program and its decision to repurpose it on cable

Network Actions And Decisions On Program Issues. Table 3 shows that network actions or decisions with respect to programming issues were reported during approximately 77% of ABC affiliates association board meetings, 41% of CBS affiliates association board meetings, and 42% of NBC affiliates association board meetings. During these meetings, in addition to discussing issues pertaining to network programming, board members or network executives participating in the meetings reported on actions taken or decisions made by the networks with respect to such issues. The examples outlined in the NAB/NASA comments (at pages 24-27, 29-31) and reply comments (at pages 18-21) provide some notable examples of network programming decisions made as a result of affiliate influence. Review of the affiliates' association board meeting minutes reflected in Table 3 of the WABMASA comments demonstrates that network actions and decisions in response to affiliate concerns about programming choices often are a result of an ongoing dialogue with affiliates with respect to issues of concern.

- For the NBC affiliates, the network actions and decisions reported during these board meetings included things such as commitments from network executives to look into concerns about potentially offensive content in an upcoming comedy special; reports to affiliates regarding the network's plans with respect to its election night programming; reports that the network had decided to pull back on the content of *Dog Eat Dog* in response to concerns that it had crossed the line and promises that there would be no further nudity on the program; reports that the network had developed a way to ensure that *Arena Football* would not run over into local program time; the network's agreement that the *Purina Dog Show*

Ms. Marlene H. Donch
March 25, 7003
Page 4

airing during local time on Thanksgiving Day could be time-shifted by affiliates to avoid disruptions of the local news and program schedule; and the network's agreement that certain programs approaching the line in terms of content would be pre-fed to affiliates so that affiliates could determine in advance whether the content was suitable for their particular communities.

- For CBS affiliates, network actions and decisions reported during these board meetings included things such as commitments from the network (in 1999) that it would continue to allow affiliates to use the "blended" or "co-op" format of the CBS morning news program in response to affiliate concerns over the issue; reports regarding meetings with the network and the network's position with respect to quality of and talent on its network news programs; reports regarding the network's decisions regarding its HDTV program schedule; reports regarding the network's decision to air CBS programming on other cable and broadcast channels; and reports of CBS's change in position (in 2002) with respect to its early news program, *The Early Show*, that all affiliates should move to the full network format of the program once a new anchor and format for the program were selected.
- For ABC affiliates, network actions and decisions reported during these board meetings included things such as reports on network efforts to improve *Good Morning America* and *World News Tonight* in response to affiliate concerns about the quality of network news programs; reports regarding the network's plans for HDTV program offerings, about which affiliates had expressed concern; reports on network decisions concerning program development and specific network programming decisions relating to the Academy Awards Show, Barbara Walters Oscar Special, as well as auto racing, golf and horse racing programming, the network's decision to adjust the format of its programming; the network's decision to launch a *Soup Channel* that would repurpose programming from the ABC network; the network's decision to repurpose *Once and Again* on cable; decisions to move popular prime time programming to an alternative time period; and the decision to repurpose network programs on the *ABC Family Channel*.

The examples of network actions and decisions reported during affiliates association meetings described here, as well as the additional examples set forth in NAB/NASA's comments and reply comments, demonstrate the important give-and-take on programming issues, both large and small, that occurs between the affiliates body and the network. This dynamic, which is critical to preserving localism for our nation's broadcast television service, quickly would be lost if the networks were permitted to acquire television stations reaching more of the nation's viewers in excess of the 35% cap.

* * * *

COVINGTON & BURLING

Ms. Marlene H. Donch
March 25, 2003
Page 5

Pursuant to Section 1.1206(b) of the Commission's Rules, an original and eight copies of this letter (*two* copies for each docket number) are being submitted to the Secretary's office, with copies to those at the FCC that attended the meetings. Copies of this letter also have been provided to Linda Senecal and Qualex International.

Respectfully submitted.



Henry D. Baumann
Jack N. Goodman
Jerianne Timmerman
NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, N.W.
Washington, D.C. 20036-2891



Jonathan D. Blake
Jennifer A. Johnson
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401

Wade H. Hargrove
Mark J. Prak
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD
First Union Capitol Center
Raleigh, NC 27601

*Counsel for the Network Affiliated
Stations Alliance*

cc: Susan Eid
Catherine Bohigian
Jordan Goldstein
Johanna Mikes
Stacy Robinson
Sarah Whitesell
Kenneth Ferree
Paul Gallant
Mania Baghdadi
Julie Buchanan
Marcia Glauberman
Judy Herman
Roger Holberg
Robert Ratcliffe
Debra Sabourin
Royce Sherlock
Roy Stewart
Patrick Webre
Linda Senecal
Qualex International